

FILED

2008 FEB -6 P 2:55

RICHARD W. WILKINS
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA, S.J.

WILLIAM R. TAMAYO (CA State Bar No. 84965)
JONATHAN T. PECK (VA State Bar No. 12303)
SANYA HILL MAXION (WA State Bar No. 18739)
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
San Francisco District Office
901 Market Street, Suite 500
San Francisco, California 94103
Telephone: (415) 356-5047
Facsimile: (415)625-5657

Attorneys for Applicant

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CV 08 - 80017 MISC.

RMW

HRL

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Applicant,

v.

ENGLISH OAKS CONVALESCENT
REHABILITATION CENTER,

Defendant.

Civil Action Number:

DECLARATION OF MICHAEL
BALDONADO IN SUPPORT OF
APPLICATION FOR AN ORDER
ENFORCING SUBPOENA

I, MICHAEL BALDONADO, under penalty of perjury, do hereby state as follows:

1. I am the Deputy Director of the San Francisco District Office of the United States Equal Employment Opportunity Commission (the "EEOC" or "Commission"). I make this Declaration in support of the Commission's application for an order enforcing a subpoena served by the Commission on Respondent, English Oaks Convalescent & Rehabilitation Center
2. I make this Declaration on the basis of my own personal knowledge and my review of the Commission's investigative file in the matter of EEOC v. English Oaks Convalescent & Rehabilitation Center, Commission Charge No. 556-2006-00532.

1 3. The Commission is a federal government agency charged with the administration,
2 interpretation, and enforcement of Title VII of the Civil Rights Act of 1964 and, as such, is
3 responsible for investigating charges alleging violations of Title VII.

4 4. On August 18, 2006, Ms. Maricela Olivares filed a charge of discrimination with the
5 Commission alleging that Respondent, English Oaks Convalescent & Rehabilitation Center
6 wrongfully discriminated against her because of her pregnancy, in violation of Title VII of the
7 Civil Rights Act of 1964, as amended. See Exhibit A.

8 5. On May 4, 2007, the EEOC sent a Request for Information (RFI) to the Respondent
9 with a response date of May 19, 2007. The RFI included information about, but was not limited
10 to the Respondent's business policies, list of employees employed in Charging Party's
11 department between January 1, 2005 to January 1, 2007, and a list of employees who received
12 warning letters between January 1, 2005 to January 1, 2007, and their contact information, job
13 title classification, and job status classification. See Exhibit B. Respondent requested and was
14 granted an extension on May 18, 2007 of the RFI due date to June 1, 2007.

15 6. On June 1, 2007, the Commission sent its final request to the Respondent to provide
16 the information sought. See Exhibit C.

17 7. On June 1, 2007, Respondent provided a response to the RFI stating various
18 objections, but failed to provide any information as previously requested on May 4, 2007. See
19 Exhibit D.

20 8. On June 25, 2007, Ms. Maricela Olivares amended her original charge alleging
21 Respondent had subsequently retaliated against her for participating in protected activities in
22 violation of Title VII of the Civil Rights Act of 1964, as amended. See Exhibit E.

1 9. On July 9, 2007, Respondent was served with the Subpoena and was informed to
2 produce the information requested in the original RFI by July 26, 2007. See Exhibit F.

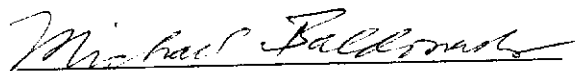
3 10. On July 26, 2007, Respondent replied to the Commission's Subpoena with a refusal
4 to produce any of the information requested, stating the EEOC's RFI violated privacy rights and
5 that third party personnel records are protected from discovery. Moreover, Respondent also
6 asserted that production of the requested information would violate Attorney-Client Privilege, in
7 addition to being overly burdensome, harassing, oppressive, vague, and ambiguous.
8

9 See Exhibit G. To date, Respondent has failed to comply with the Commission's Subpoena.

10 11. Respondent has not produced the evidence requested in the Commission's subpoena,
11 nor has Respondent objected to the subpoena in the manner prescribed by EEOC Procedural
12 regulations by means of a valid and timely "Petition to Revoke or Modify the Subpoena."
13 Instead, Respondent faxed an untimely document which purported to make various objections
14 but which did not comply with the EEOC's Procedural Regulations.
15
16

17 I have read the foregoing and do hereby declare under penalty of perjury that it is true
18 and correct.
19

20
21 DATE: November 21, 2007



22 MICHAEL BALDONADO
23 Deputy District Director,
24 U.S. Equal Employment Opportunity Commission
25
26
27
28

EXHIBIT A

Form 5 (5/01)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☐ FEPA☒ EEOC**556-2006-00532****California Department Of Fair Employment & Housing**

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

Ms. Maricela Olivares

Home Phone No. (Incl Area Code)

(209) 277-6405

Date of Birth

09-04-1981

Street Address

City, State and ZIP Code

3400 Coffee Road, #330, Modesto, CA 95355

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

ENGLISH OAKS CONVALESCENT & REHABIL

No. Employees, Members

201 - 500

Phone No. (Include Area Code)

(209) 577-1001

Street Address

City, State and ZIP Code

2633 Rumble Road, Modesto, CA 95350

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐ RACE☐ COLOR☒ SEX☐ RELIGION☐ NATIONAL ORIGIN☐ RETALIATION☐ AGE☐ DISABILITY☐ OTHER (Specify below:)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

05-25-2006☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I was hired by Respondent on September 9, 2005. My most recent position was Certified Nursing Assistant. I informed Respondent of my pregnancy on or around April 2006. I immediately began receiving write-ups for things that my similarly situated non-pregnant co-workers would not receive disciplines for. On May 1, 2006, I was no longer scheduled to work with Respondent. I complained about my no longer being scheduled, but to no avail. On May 25, 2006, I received a notice from Respondent stating that I had voluntarily quit.

Respondent's stated reason for no longer scheduling me to work was because I had requested per diem work.

I believe that I have been discriminated against because of my pregnancy, in violation of Title VII of the Civil Rights Act of 1964, as amended.

RECEIVED**AUG 24 2006****EEOC-SJLO**

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

Date

Charging Party Signature

EXHIBIT B



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
San Jose Local Office

96 North 3rd Street, Suite 200
San Jose, CA 95112
(408) 291-7282
TTY (408) 291-7374
FAX (408) 291-4539

May 4, 2007

Sarah E. Hernandez, Esq.
Keith A. Fink & Associates
11500 Olympic Boulevard, Suite 316
Los Angeles, CA 90064

Re: Maricela Olivares vs. English Oaks Convalescent & Rehabilitation Center
EEOC Charge No: 556-2006-00532

Dear Ms. Hernandez,

Thank you for your response in the above mentioned matter. Pursuant to your response on October 19, 2006, you have informed the Commission that Respondent refuses to produce information from employee personnel files, as previously requested by our representatives. However, this letter is to inform Respondent that refusal to produce the requested information is without a legitimate basis in law.

The United States Equal Employment Opportunity Commission is mandated by law to investigate charge of discrimination filed with the Commission. The information requested is specific and reasonably relevant to the investigation. Were Respondent's claim of privacy to prevail, the federal investigation would be thwarted and the statutes the Commission enforces abrogated.

Accordingly, when presented with the privacy issue, federal courts have held that the Commission's mandate preempts state restrictions. See, e.g., EEOC vs. County of San Benito, 818 F. Supp. (N.D. Ca. 1993) (citing cases and holding that the scope of an evidentiary privilege in federal question cases, is controlled by federal law). Simply put, personnel files are discoverable in federal question cases, herein, despite claims of privilege. Moreover, there is no federal requirement that conditions production of relevant personnel records and information on a release or waiver by the individuals whose records are requested pursuant to a duly authorized Commission investigation. Concerns about confidentiality of records are addressed by the federal statutes themselves. See, e.g., EEOC vs. Valley Industrial Services, 32 FEP Cases 482 (N.D. Ca. 1983).

Your response also indicated that you were objecting to provide the information because in your words "your request is overly broad in scope and time frame.", however, the EEOC needs comparative information in order to fully investigate this matter. The time indicated below is completely relevant to the time the frame the Charging Party was employed and thereafter.

I believe that this letter provides Respondent with sufficient legal authority regarding the Commission's right to obtain the requested information and records. Please advise me no later than May 18, 2007, if Respondent intends to comply.

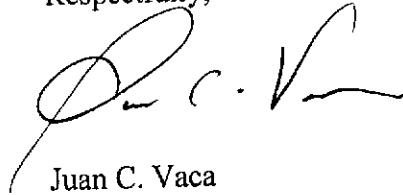
If Respondent is willing to comply, please provide the responses to the information below by **May 18, 2007**.

1. Please provide the complete first and last name of all Certified Nursing Assistants located at Respondent's 2633 Rumble Rd, Modesto, CA location, who were employed at Respondent's West Wing department from January 1, 2006, to January 1, 2007. For all non-Manager Certified Nursing Assistants employed during the time frame indicated above, provide the person's home telephone number and home address. If the person is no longer employed by Respondent but was a non-Manager employee during their employment, provide the individuals last known home telephone number and last known home address.
2. Provide the first and last name of any and all Certified Nursing Assistants who committed the same or similar offense(s) as Charging Party committed and indicate what action was taken against them. Also, indicate date of the disciplinary action(s), the reason for the disciplinary action(s) and provide the first and last name of the official imposing the penalty, if any.
3. Please submit the first and last name of any and all Certified Nursing Assistants who have resigned and or were terminated (within Respondent's West Wing department) between January 1, 2006, to January 1, 2007.
4. Provide the first and last name of any and all Certified Nursing Assistants (within the West Wing department) who were distinguished and or classified as *per diem* employees from January 1, 2006, to January 1, 2007. Also, for all Certified Nursing Assistants who were not classified as *per diem* please indicate their employee classification.
5. As stated in Respondent's response, "As a *per diem* employee, Ms. Olivares would receive additional compensation and would be "on call". Please provide copies of Respondents policy that states that *per diem* Certified Nursing Assistants are considered "on call".
6. Please identify the Staffing Coordinator who was/is responsible for scheduling work shifts for *per diem* Certified Staffing Assistants (in Respondent's West Wing department) from January 1, 2006, to January 1, 2007.

If you have any further questions regarding this matter please feel free to contact me at (408) 291-4236, during normal business hours.

Your cooperation in this matter is greatly appreciated.

Respectfully,

A handwritten signature in black ink, appearing to read "J. C. Vaca", written in a cursive style.

Juan C. Vaca
Federal Investigator



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
San Jose Local Office

96 North Third Street, Suite 200
San Jose, California 95112
PH: (408) 291-7282
FAX: (408) 291-4539
TDD: (408) 291-7374
eeoc095@ibm.net
www.eeoc.gov

DATE: May 4, 2007

FACSIMILE COVER SHEET

To: Sarah E. Hernandez
Name of company: Keith A. Fink & Associates
Fax number: (310) 268-0790

Total no. of page(s) including this transmittal cover: 4

From: Juan C. Vaca, Federal Investigator

IF YOU DO NOT RECEIVE ALL PAGE(s) or HAVE ANY PROBLEM RECEIVING THIS TRANSMISSION. PLEASE CALL ME IMMEDIATELY.

******* CONFIDENTIALITY NOTICE *******

This communication is intended for the sole use of the person(s) to whom it is addressed and may contain information that is privileged, confidential and exempt from disclosure.

Any dissemination, distribution or copying of this communication by anyone other than the intended recipient or the person responsible for its delivery is strictly prohibited.

If you have received this communication in error, please call this office immediately and either destroy the communication or return it to the above address.

Special instruction/Comments: Maricela Olivares vs. English Oaks Convalescent & Rehabilitation Center, EEOC Charge No. 556-2006-00532. Sent by fax and U.S. Mail

Confirmation Report - Memory Send

Page : 001
Date & Time: 04-May-07 14:44
Line 1 : +408 2914539
Line 2 :
Machine ID : EEOC SJLO

Job number : 480
Date : 04-May 12:54
To : 913102680790
Number of pages : 004
Start time : 04-May 12:54
End time : 04-May 12:56
Pages sent : 004
Status : OK

Job number : 480

*** SEND SUCCESSFUL ***



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
San Jose Local Office

96 North Third Street, Suite 200
San Jose, California 95112
PH: (408) 291-7282
FAX: (408) 291-4539
TDD: (408) 291-7374
eeoc095@ibm.net
www.eeoc.gov

DATE: May 4, 2007

FACSIMILE COVER SHEET

To: Sarah E. Hernandez
Name of company: Keith A. Fink & Associates
Fax number: (310) 268-0790

Total no. of page(s) including this transmittal cover: 4

From: Juan C. Vaca, Federal Investigator

IF YOU DO NOT RECEIVE ALL PAGE(s) or HAVE ANY PROBLEM RECEIVING
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Special instruction/Comments: Maricela Olivares vs. English Oaks Convalescent & Rehabilitation Center, EEOC Charge No. 556-2006-00532. Sent by fax and U.S. Mail

EXHIBIT C



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
San Jose Local Office

96 North 3rd Street, Suite 200
San Jose, CA 95112
(408) 291-7282
TTY (408) 291-7374
FAX (408) 291-4539

June 1, 2007

Sarah E. Hernandez, Esq.
Keith A. Fink & Associates
11500 Olympic Boulevard, Suite 316
Los Angeles, CA 90064

By Facsimile: (310) 268-0790

Re: Maricela Olivares vs. English Oaks Convalescent & Rehabilitation Center
EEOC Charge No: 556-2006-00532

Dear Ms. Hernandez,

Our records show that information was requested from you regarding the above referenced charge on May 4, 2007. The information was due on or before May 18, 2007. To date, I have not received the documentation requested. The Commission is now making a **final request** that the Respondent provide the information requested.

Please note that the EEOC is empowered to subpoena evidence necessary to its investigation pursuant to **SECTION 710 OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED**. It is the Commission's wish that we will receive all the requested information and therefore, it will be unnecessary for us to resort to the subpoena process. However, if the information is not received by **June 15, 2007**, we will proceed under the above statutes.

If you have any questions you may contact me by phone at (408) 291-4236, Monday through Friday from 8 a.m. to 4 p.m.

Your cooperation is greatly appreciated.

Respectfully,

A handwritten signature in black ink, appearing to read "Juan C. Vaca", is written over the typed name.

Juan C. Vaca
Federal Investigator

EXHIBIT D

Keith A. Fink & Associates

Attorneys at Law

KEITH A. FINK

SARAH E. HERNANDEZ
ALEXANDRA ZAK
KENNETH TOWNSEND
BRYK GETTELL
OLAF J. MULLER

11500 Olympic Boulevard, Suite 316
Los Angeles, California 90054
(310) 268-0780
Fax (310) 268-0790

188 15th Avenue
San Francisco, CA 94118
(415) 385-1767
Fax (415) 386-2867

www.finklawfirm.com

- Of Counsel -
S. KEVEN STEINBERG

June 1, 2007

VIA FACSIMILE AND U.S. MAIL
(408) 291-4539

Juan C. Vaca-Federal Investigator
U.S. Equal Employment Opportunity Commission
San Jose Local Office-556
96 North Third Street
Suite 200
San Jose, California 95112

Re: Olivares/English Oaks Convalescent & Rehabil Charge No. 556-2006-00532

Dear Mr. Vaca:

Attached please find the response to the Commission's request for employee personnel files regarding the above entitled matter. The Commission seeks personnel information, claiming that there is "no legitimate basis of law" for refusing access to this information. In fact, the cases cited by the Commission in its May 4th letter are inapplicable to the facts of this case.

The Commission asserts that "federal courts have held that the Commission's mandate preempts state restrictions" regarding privacy issues. EEOC v. County of San Benito, 818 F. Supp 289 (N.D. Ca. 1993). This case is inapplicable for several reasons. In County of San Benito, there was no issue as to whether the information requested by the Commission was specific, definite and directly relevant to the claim. *Id.* The claims arose out of the alleged conduct of the police officer whose personnel files were requested. The present case is distinguishable because the personnel files requested are those of employees whose conduct does not directly relate to the claims. Thus in the situation before us now, where Respondent argues that these requests are overly broad in scope and time frame as it relates to third parties, County of San Benito does not apply.

Regarding the Commission's assertion that concerns about confidentiality of records are

addressed by the federal statutes themselves, the EEOC v. Valley Industrial Services cited in the May 4th letter is also inapplicable. 570 F. Supp. 902 (N.D. Ca 1983). While Valley Industrial Services does point out that the EEOC is under statutory mandate to keep information obtained during an investigation confidential, the main focus of the case explains that the purpose of an administrative subpoena is to determine whether there's reasonable cause to believe that a violation of law has occurred. *Id.* Thus the defendant in Valley Industrial Services failed in arguing that the subpoena need not be complied with because there was no valid charge. *Id.* This holding has little to do with the facts in the present case. Valley Industrial Services also cites to EEOC v Cambridge Tile Manufacturing Co., which states that EEOC proceedings may only be as broad as the facts developed in a reasonable investigation of the charge will warrant. 590 F. 2d 205 (6th Cir. 1979). Here there are no facts which warrant any investigation into secondary claims or issues other than those originally raised by Ms. Olivares. There is thus no reason for access to the personnel files of any individuals not directly related to the litigation.

Accordingly, Respondent will not be providing further information with respect to numbers 1, 3, 4, and 6.

With respect to number 2, Respondent is unable to provide a response because no disciplinary action was taken against the Charging Party, Ms. Olivares. Rather, Ms. Olivares informed Respondent that she obtained another job and refused to return to work unless she was given full time hours. Ms. Olivares was informed that since she was a per diem employee, she was scheduled to work as needed and could not be guaranteed full time hours. Accordingly, Ms. Olivares quit her employment with Respondent and refused to return to work.

With respect to number 5, please be advised that a response will be provided by the end of next week. If you have any questions, do not hesitate to contact me.

Very truly yours,

Sarah A. Hernández, Esq.
For KEITH A. FINK & ASSOCIATES

EXHIBIT E

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Printed To:

Agency(ies) Charge No(s):

☐ FEPA

AMENDED

☒ EEOC

556-2006-00532

California Department Of Fair Employment & Housing

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

Ms. Maricela Olivares

Home Phone (Incl. Area Code)

(209) 535-5063

Date of Birth

09-04-1981

Street Address

City, State and ZIP Code

505 Pioneer Drive, # 90, Lodi, CA 95240

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

ENGLISH OAKS CONVALESCENT & REHABILITATION

No. Employees, Members

201 - 500

Phone No. (Include Area Code)

(209) 577-1001

Street Address

City, State and ZIP Code

2633 Rumble Road, Modesto, CA 95350

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)



RACE



COLOR



SEX



RELIGION



NATIONAL ORIGIN



RETALIATION



AGE



DISABILITY



OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

05-25-2006



CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I was hired by Respondent on September 9, 2005. My most recent position was Certified Nursing Assistant. I informed Respondent of my pregnancy on or around April 2006. I immediately began receiving write-ups for things that my similarly situated non-pregnant co-workers would not receive disciplines for. On May 1, 2006, I was no longer scheduled to work with Respondent. I complained about my no longer being scheduled, but to no avail. On May 25, 2006, I received a notice from Respondent stating that I had voluntarily quit.

Respondent's stated reason for no longer scheduling me to work was because I had requested per diem work.

I believe I was retaliated against for engaging in protected activities. I also, believe that I have been discriminated against because of my pregnancy, in violation of Title VII of the Civil Rights Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the foregoing and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

RECEIVED

JUN 26 2007

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

EEOC-SJLO

Date

Charging Party Signature

EXHIBIT F

UNITED STATES OF AMERICA
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SUBPOENA

TO: Custodian of Records
English Oaks Convalescent & Rehabilitation Center
2633 Rumble Road
Modesto, CA 95350

NO. SF-07-030

IN THE MATTER OF: Maricela Olivares vs. English Oaks Convalescent & Rehabilitation Center

Charge No. 556-2006-00532

Having failed to comply with previous request(s) made by or on behalf of the undersigned Commission official, YOU ARE HEREBY REQUIRED AND DIRECTED TO:

☐ Testify before: ☐ Produce and bring * or ☒ Mail * the documents described below to:

☐ Produce access to the evidence described below for the purpose of examination or copying to:

Juan C. Vaca, Investigator

of the Equal Employment Opportunity Commission

at 96 N. 3rd Street, Suite 200, San Jose, CA 95112

on July 26, 2007 at 4:00pm o'clock

The evidence required is

SEE ENCLOSED DOCUMENT REQUEST

This subpoena is issued pursuant to



(Title VII) 42 U.S.C. 2000e-9



(ADEA) 29 U.S.C. 626(a)



(EPA) 29 U.S.C. 209



(ADA) 42 U.S.C. 12117(a)

ISSUING OFFICIAL (Typed name, title and address)

EEOC-San Francisco District Office
901 Market Street, Suite 500
San Francisco, California 94103
H. Joan Ehrlich, District Director

ON BEHALF OF THE COMMISSION

Michael Balderson 7-5-07

Date



NOTICE TO PERSON SUBPOENAED - The Commission will not pay witness fees or travel expenses for the delivery of required documents to a Commission office unless the box "Testify before" is also checked on the subpoena.

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Received by (Please Print Clearly) <u>ARA MENDOZA</u> B. Date of Delivery <u>7/9/07</u> C. Signature <u>[Signature]</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
1. Article Addressed to:			

Custodian of Records
English Oaks Convalescent & Rehabilitation Center
2633 Rumble Road
Modesto, CA 95350
07052007 C2 556200600532 JCV

3. Service Type	
<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered	<input type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	

2. 7002 2030 0003 6574 6263

PS Form 3811, March 2001

Domestic Return Receipt

102595-01-M-1424

7002 2030 0003 6574 6263

U.S. Postal Service™	
CERTIFIED MAIL™ RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com ®	
<u>556-2006-00532 E</u>	
Postage	\$ <u>.58</u>
Certified Fee	<u>2.65</u>
Return Receipt Fee (Endorsement Required)	<u>2.15</u>
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ <u>5.38</u>
<u>7-5-07</u> Postmark Here <u>[Signature]</u>	
See Custodian of Records English Oaks Convalescent & Rehabilitation Center 2633 Rumble Road Modesto, CA 95350 07052007 C2 556200600532 JCV	
PS Form 3800, June 2002 See Reverse for Instructions	

Re: EEOC Charge No: 556-2006-00532
Maricela Olivares vs. English Oaks Convalescent & Rehabilitation Center
Subpoena page 2

DOCUMENT REQUEST
CHARGE NO: 556-2006-00532

1. Please provide the complete first and last name of all Certified Nursing Assistants located at Respondent's 2633 Rumble Rd, Modesto, CA location, who were employed in Respondent's West Wing department from January 1, 2006, to January 1, 2007. For all Certified Nursing Assistants employed during the time frame indicated above, provide the person's home telephone number and home address. For individuals no longer employed by Respondent during the time frame indicated above, provide the individuals last known home telephone number and last known home address.
2. Provide the first and last name of any and all Certified Nursing Assistants in the West Wing Department (including full-time and per diem) who were issued Employee Warning Letters between January 1, 2005, to January 1, 2007. For these offenses indicate the reason for the disciplinary action(s) and provide the first and last name and job title of the imposing official.
3. Please submit the first and last name of any and all Certified Nursing Assistants who have resigned and or were terminated (within Respondent's West Wing department) between January 1, 2006, to January 1, 2007.
4. Provide the first and last name of any and all Certified Nursing Assistants (within the West Wing department) who were distinguished and or classified as *per diem* employees from January 1, 2006, to January 1, 2007. Also, for all Certified Nursing Assistants who were not classified as *per diem* please indicate their employee classification.
5. As stated in Respondent's response, "As a per diem employee, Ms. Olivares would receive additional compensation and would be "on call". Please provide copies of Respondents policy from January 1, 2005, to the present, which states that *per diem* Certified Nursing Assistants are considered "on call". Also, please indicate the date the policy was originally written and the date(s) the policy was revised if at all.
6. Please identify the Staffing Coordinator who was/is responsible for scheduling work shifts for *per diem* Certified Staffing Assistants (in Respondent's West Wing department) from January 1, 2006, to January 1, 2007.

**SUBPOENA
PROOF OF SERVICE**

I hereby certify that being over 18 years of age and not a party to or any way interested in these proceedings, I duly served a copy of the subpoena on the persons named in this subpoena.

☐ in person
☒ by certified mail
☐ by leaving a copy with a responsible person, at the principal office or place of business, to wit:

Name GRACE R. VALENCIA
Position IT Specialist
Address 96 N. 3rd St., #200, San Jose, CA 95112

On July 5, 2007
Grace R. Valencia
(Mo, day & year)
(Signature of person making service)
IT Specialist
(Official title, if any)

State California
Parish/
County Santa Clara

CERTIFICATION OF ATTENDANCE

I certify that the person named herein was in attendance and satisfactorily produced the records requested or gave oral testimony at

On _____
(Mo, day & year)

(Signature of person making service)

(Official title, if any)

EXHIBIT G

1 Keith A. Fink, Bar No. 146841
2 Sarah E. Hernandez, Bar No. 206305
3 KEITH A. FINK & ASSOCIATES
4 Attorneys at Law
5 11500 Olympic Boulevard, Suite 316
6 Los Angeles, California 90064
7 Telephone: (310) 268-0780
8 Facsimile: (310) 268-0790

9 Attorneys for Respondent
10 ENGLISH OAKS CONVALESCENT & REHABILITATION CENTER

11 UNITED STATES OF AMERICA
12
13 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
14

15 MARICELA OLIVARES

16 Charging party,

17 v.

18 ENGLISH OAKS CONVALESCENT &
19 REHABILITATION CENTER

20 Respondent.

21 CASE NO. SF-07-030

22 RESPONDENT'S OBJECTIONS TO
23 SUBPOENA

24 PROPOUNDING PARTY: EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
25 RESPONDING PARTY: ENGLISH OAKS CONVALESCENT & REHABILITATION
26 CENTER
27 SET NUMBER: ONE

28 GENERAL OBJECTIONS

Respondent hereby object to the requests to produce. Pursuant to Code of Civil Procedure § 1987

Respondent hereby respond to the EEOC's Subpoena as follows:

Respondent have not fully completed the investigation of the facts relating to this case and has not fully completed the discovery in this action. Consequently, all of the responses contained herein are based only upon such information and documents which are presently available to and specifically known to Respondent and disclose only those contentions which presently occur to Respondent. It is anticipated that

1 further discovery, independent investigation, legal research and analysis will supply additional facts, add
2 meaning to known facts, as well as establish entirely new factual conclusions and legal contentions, all of
3 which may lead to substantial additions to, changes in and variations from the contentions herein set forth.
4 The following responses are given without prejudice to Respondent's right to produce evidence of any
5 subsequently discovered fact or facts which it may later recall. Accordingly, Respondent reserves the right
6 to change any and all answers herein as additional facts are ascertained, analyses are made and legal
7 research is completed. The answers contained herein are made in a good faith effort to supply as much
8 factual information and as much specification of legal contentions as is presently known, but should in no
9 way be to the prejudice of Respondent in relation to further discovery, research or analysis.

10 Respondent objects to the Request for Production to the extent it seeks to impose a continuing
11 obligation on her to update responses.

12 Subject to and without waiving these objections, Respondent refers to and incorporates this General
13 Response in each of the following responses:

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

15 Objection. This request violates the right of privacy, third party personnel records are protected
16 from discovery (Harding Lawson Associates v. Sup.Ct., (1992) 10 Cal.App. 4th 7, 10). Overbroad as to
17 time. Overly burdensome, harassing, and oppressive. Violates Code of Civil Procedure.§1985.6.
18 Attorney client privilege, work product. Vague and ambiguous.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

20 Objection. This request violates the right of privacy, third party personnel records are protected
21 from discovery (Harding Lawson Associates v. Sup.Ct., (1992) 10 Cal.App. 4th 7, 10). Overbroad as to
22 time. Overly burdensome, harassing, and oppressive. Violates Code of Civil Procedure.§1985.6.
23 Attorney client privilege, work product. Vague and ambiguous.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

25 Objection. This request violates the right of privacy, third party personnel records are protected
26 from discovery (Harding Lawson Associates v. Sup.Ct., (1992) 10 Cal.App. 4th 7, 10). Overbroad as to
27 time. Overly burdensome, harassing, and oppressive. Violates Code of Civil Procedure.§1985.6.
28 Attorney client privilege, work product. Vague and ambiguous.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Objection. This request violates the right of privacy, third party personnel records are protected from discovery (Harding Lawson Associates v. Sup.Ct., (1992) 10 Cal.App. 4th 7, 10). Overbroad as to time. Overly burdensome, harassing, and oppressive. Violates Code of Civil Procedure.§1985.6. Attorney client privilege, work product. Vague and ambiguous.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Objection. This request violates the right of privacy, third party personnel records are protected from discovery (Harding Lawson Associates v. Sup.Ct., (1992) 10 Cal.App. 4th 7, 10). Overbroad as to time. Overly burdensome, harassing, and oppressive. Violates Code of Civil Procedure.§1985.6. Attorney client privilege, work product. Vague and ambiguous.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

Objection. This request violates the right of privacy, third party personnel records are protected from discovery (Harding Lawson Associates v. Sup.Ct., (1992) 10 Cal.App. 4th 7, 10). Overbroad as to time. Overly burdensome, harassing, and oppressive. Violates Code of Civil Procedure.§1985.6. Attorney client privilege, work product. Vague and ambiguous.

DATED: July 16, 2007

KEITH A. FINK & ASSOCIATES

By

Keith A. Fink
Sarah E. Hernandez
Attorneys for Respondent ENGLISH OAKS
CONVALESCENT & REHABILITATION
CENTER

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 11500 W. Olympic Boulevard, Suite 316, Los Angeles, California, 90064.

On July 26, 2007, I caused the document described as **RESPONDENT'S OBJECTIONS TO SUBPOENA** to be served on all interested parties in this action as follows:

☒ by placing ☐ the original ☒ true copies thereof enclosed in sealed envelopes addressed as follows:

Juan C. Vaca-Federal Investigator
U.S. Equal Employment Opportunity
Commission
San Jose Local Office-556
96 North Third Street
Suite 200
San Jose, California 95112

☐ (BY MAIL) As follows: I am "readily familiar" with the firm's practice for collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

☒ (BY FACSIMILE) Using fax number (310) 268-0790 I transmitted such document by facsimile machine, pursuant to California Rules of Court 2001 et seq. The facsimile machine complied with Rule 2003(3). The transmission was reported as complete. I caused the machine to print a transmission report of the transmission, a copy of which is attached to this declaration. I am employed in the County of Los Angeles, State of California.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Dated: July 26, 2007


Alex Franco